

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

MARK LEE, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	CASE NO. 1:05-cv-256-F
)	WO
JAMES MONTGOMERY, <i>et al.</i> ,)	
)	
Defendants.)	

ORDER

On March 19, 2004, the plaintiffs¹ filed this civil lawsuit in the Circuit Court of Henry County, Alabama against defendants James Montgomery, Joel Strickland, Jim Maples, Mack Trucks, Inc., and other fictitious defendants. (Doc. # 1, Compl.). On March 17, 2005, Defendants Mack Trucks, Inc.² and Jim Maples³ removed the lawsuit to this court pursuant to 28 U.S.C. §§ 1332 and 1441. (Doc. # 1, Notice of Removal). By their Notice of Removal, said defendants argue that diversity jurisdiction exists in this case because the residency of Defendants James Montgomery and Joel Strickland, who are Alabama residents, should not be considered as “there is evidence of Plaintiffs’ intent to abandon the claim against Strickland and Montgomery.” (*Id.* at p. 3).

On April 1, 2005, the plaintiffs filed a Motion to Remand arguing that they “have not

¹ Plaintiffs are residents of Alabama.

² Defendant Mack Trucks, Inc. is a Pennsylvania corporation with its principal place of business in Pennsylvania.

³ Defendant Jim Maples is a Florida resident.

abandoned their claims against any of the originally named Defendants, including the claims against the individual Defendant, James Montgomery.” (Doc. # 5 at ¶ 1). Moreover, Plaintiffs argue that their attempts to serve Defendant James Montgomery have “simply been thwarted” and that they were able to “effectuate service upon Mr. Montgomery at the location of current incarceration at Ventress Prison . . .” (*Id.* at ¶¶ 2 & 3). Plaintiffs thus assert that no diversity of citizenship exists in this case and request that this case be remanded to the Circuit Court of Henry County, Alabama. (*Id.* at ¶¶ 6 & 7).

In reaction to the motion to remand, on April 26, 2005, Defendant Mack Trucks, Inc. filed a response stating that it “consents to Plaintiff’s Motion to Remand” and Defendant Jim Maples filed a response stating that he “submits this notice of non-opposition” to the motion to remand. (Docs. # 8 & 9).

Upon consideration of the motion to remand and the responses thereto, it is hereby ORDERED that the motion to remand (Doc. # 5) is GRANTED and the above-styled case is REMANDED to the Circuit Court of Henry County, Alabama.

The Clerk of the Court is DIRECTED to take the necessary steps to effectuate the remand of this case to the Circuit Court of Henry County, Alabama.

DONE this 27th day of April, 2005.

/s/ Mark E. Fuller
CHIEF UNITED STATES DISTRICT JUDGE

